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## **The Exception to the Rule?**

### **The EU and India's Challenge to the Non-Proliferation Norm**

Norm challenge is a continuous feature of international norms. However, the dynamics of such a challenge are still not properly understood. Therefore, this article examines in-depth the key processes involved in a major, but still under-explored challenge in the case of the nuclear non-proliferation regime: the recent accommodation of India in the regime, even though it developed nuclear weapons in violation of the regime's fundamental non-proliferation norm. More specifically, it will focus on how certain states came about to support such a norm challenge. In this regard, the European Union and its member states played a crucial role, as they included both very supportive and very reluctant states that all had the opportunity to block India's accommodation in the regime. In contrast to the traditional focus on persuasion and argumentation in the norm-based literature, this article argues that it was the peculiar interplay of persuasion and argumentation with material incentives, pressure and bargaining that created the support for norm challenge in the early stages, in particular in the case of the states that remained highly skeptical of the challenge.

**Keywords:** European Union, nuclear non-proliferation regime, India, US-India nuclear deal, International Atomic Energy Agency, Nuclear Suppliers Group, norm challenge, persuasion, material incentives, tipping point

## Introduction

Since the entry into force of the Nuclear Non-Proliferation Treaty (NPT) in 1970, the nuclear non-proliferation regime has been based on a delicate trade-off between two basic normative elements: Whereas nuclear weapons may not be developed by those states that did not possess them already before 1967<sup>1</sup> – the so-called non-proliferation norm – the nuclear weapon states have, in turn, a long-term obligation to reduce and ultimately eliminate their nuclear arsenals. In addition, non-nuclear weapon states possess the right to develop nuclear technology for civilian purposes (Ruble 2009, Freedman 2013). Traditionally, India has been one of the most persistent opponents of this nuclear regime. In recent years, however, it began to change course and has pushed for its full acceptance in the existing regime as a nuclear weapon state. This major policy shift has posed one of the most serious challenges to the international non-proliferation regime in the last decade. More specifically, if the existing regime members begin to accept India as a *de facto* nuclear weapon state in the regime, they will undermine the regime's basic trade-off, as it would reward a state with the rights and privileges of a nuclear weapon state, even though it did not respect the fundamental non-proliferation norm. From a normative point of view, this fundamental challenge is exemplified by a little-known US-India nuclear agreement that was initiated in 2005 and adopted in 2008 (Pant 2007). In order to enter into force, this agreement required two major concessions from regime member states: first, a so-called safeguard agreement between India and the International Atomic Energy Agency (IAEA) that would put Indian civilian nuclear installations under IAEA control, but leave its military installations uncontrolled – a privilege reserved only for the five nuclear weapon states recognized by the NPT; secondly, an unprecedented waiver by the so-called Nuclear Suppliers Group (NSG), an informal institution formed by currently 48 states with nuclear capabilities, which would allow nuclear exports to India even though it has developed nuclear weapons outside the existing frameworks and has not ratified the NPT.

As all member states of the European Union (EU) are represented in the NSG and a substantial portion sits also on the IAEA Board of Governors, the Agency's decision organ, these questions have affected directly the EU and its member states. Moreover, they have been highly problematic for the EU and its emerging non-proliferation policy: First, the India-specific safeguard agreement and the NSG waiver do not only put into question the normative basis of the existing nuclear non-proliferation regime but also the EU's unconditional support for this regime, as outlined in the landmark 2003 EU WMD Strategy,

where ‘effective multilateralism’ is hailed as the corner stone of the EU’s non-proliferation policy (Rynning 2007). Secondly, EU member states – and member state government themselves – were divided about virtually all issues involved, even from a broader perspective (see Meier 2012). Although initially there was the intent to forge a common European position, member states could not agree (PTI News Agency 2006b, Anthony and Grip 2013). Thirdly, India and the EU lack any kind of substantial strategic interaction beyond their trade relations (Allen 2013). To make things even more complicated India also challenged the EU directly, when it refused to sign any kind of political agreement that would foresee the inclusion of the so-called EU non-proliferation clause that urges states to ratify key agreements in the field of non-proliferation (Quille 2013). All in all, India has become a crucial test case to observe how the EU and its member states react to emerging powers’ fundamental challenges to existing multilateral regimes.

Surprisingly, in the nuclear field, all EU member states have ultimately reacted in the same way and given in to Indian demands, even though they had *de facto* veto powers in the and the NSG and the possibility to make the decision-making in the IAEA more difficult.<sup>2</sup> Thus, the IAEA Board of Governors adopted an India-specific safeguard agreement in mid-2008 and the NSG endorsed the waiver for India shortly afterwards. How is it possible to explain such an outcome? In order to answer this question it is necessary to distinguish between two relevant groups of EU member states: on the one hand, a group eager to engage India in international affairs and on the other hand, a more skeptical group of states. For analytical purposes, the article focuses on the most consistent representatives of these groups, France and the UK and Austria and Ireland respectively. It argues that the first group was easily swayed by India’s argumentation, not least because it also benefited in economic terms from the opening up of nuclear trade with India. Crucially, by making use of conceptualizations of norm challenge that include both ideational and material factors, the article shows that these states have been able to create a tipping point in favor of the weakening of the non-proliferation norm entailed in the India-specific IAEA safeguard agreement and the NSG waiver. Beyond this tipping point, it became eventually very difficult for the relatively small second group of states to justify their resistance and hold the ground in light of broader commercial considerations and the pressure exerted by major powers and authoritative actors such as the Director General of the IAEA.

The remainder of the article is structured as follows: First, it will conceptualize both India’s challenge and the EU’s response in the specific context of the emerging literature on norm challenges. Second, it will outline India’s argumentation in favor of the exceptions that

challenged the existing non-proliferation norm. Subsequently, it will examine how the generally supportive states readily embraced this argumentation and created a tipping point. Then it will analyze what the tipping point meant exactly for the policies of the more reluctant states and how they acquiesced in the India-specific exceptions even though they were not convinced and could have blocked or delayed them. Finally, the article will conclude with the broader implications for the literature on norm challenges and the EU as an international actor.

### **Conceptualizing India's challenge to the non-proliferation norm**

The non-proliferation regime has been remarkably robust and stable during the last forty years. It has gained near-universal status, with India being one of only four states that have never signed or ratified the NPT, the regime's key treaty.<sup>3</sup> However, regimes, and the norms they entail, are rarely static over an extended period of time. As the recent literature on norm cycles (Sandholtz 2009), norm dynamics (Müller and Wunderlich 2013) and norm contestation (Wiener 2004) highlights, even well established norms get challenged at some point. This is related to both the intrinsic nature of norms and the norms' relation with its external environment (Krook and True 2010). Norms are often imprecise (Wiener 2004, Kersbergen and Verbeek 2007), suffer occasionally from internal contradictions (Sandholtz and Stiles 2009) or cement inherent inequalities between states (Müller 2013). They are, therefore, frequent sources of disputes and conflicts about what they actually mean in practice (Wiener 2004, Kersbergen and Verbeek 2007, Sandholtz 2009). Furthermore, major disruptions in a norm's external environment will increase the likelihood of such disputes and conflicts. Especially wars, revolutions and major technological changes are associated with norm challenges (Sandholtz 2009). More generally, it are frequently power shifts, or simply power asymmetries, in the international system that increase the pressure to adjust existing norms (Finnemore 2005). This is particularly prevalent if the systemic changes are accompanied by active norm entrepreneurship by certain actors on behalf of norm change (Finnemore and Sikkink 1998, Wunderlich 2013).

In the case of India and the nuclear non-proliferation regime, most of these factors have been present. Although historically India tended to advocate the replacement of the entire nuclear regime, in recent years it has become an outspoken entrepreneur in favor of norm change rather than norm replacement. This new orientation of India's nuclear policy is

related to broader changes in its foreign policy strategy, where both the idealism and the *realpolitik* of previous decades have been replaced by a more pragmatic approach based on economic priorities (Mukherjee and Malone, 2011) and underpinned by the growing dominance of liberal ideas about prosperity and peace in Indian foreign policy thinking (Sagar 2009). In practice, the shifts in India's foreign policy are reflected in its growing inclusion in the international system as an emerging economic powerhouse and its more active role in international institutions (Narlikar 2011). At the same time, India's increasing economic power at the global level brings to the fore the inherent inequalities and power asymmetries in the existing nuclear regime, in particular the discrimination between some states that are traditionally legitimate possessors of nuclear weapons and others that are not allowed to possess any. In short, power shifts allow India to challenge the contradictions of the existing international norms in the nuclear field. Yet, as Finnemore (2005, p. 204) warns, 'Devising multilateral rules to accommodate the interests of the newly-powerful will be a challenge'.

The challenge to an existing norm is rarely a straightforward affair. Advocates of the existing norms are likely to resist any challenges that may impair the effectiveness of the existing ones, for example in the form of major norm exceptions (Elgström 2000). In the case of India, this became obvious, when India and the United States issued a landmark joint statement in July 2005, the starting point of the 2008 nuclear deal. The statement contemplated for the first time the inclusion of India in the international non-proliferation regime without the need to give up its nuclear weapons. The statement constituted a significant reversal of both the meaning of established non-proliferation norms and corresponding US policies, provoking strong resistance from pundits: 'Almost universally, nonproliferation and arms control experts have deemed the deal as harmful to global efforts in the fields of nuclear nonproliferation, arms control and disarmament' (Rauch 2010, p. 1).<sup>4</sup> In essence, these experts have argued that accommodating the international non-proliferation regime in such a way that India receives all the benefits of a nuclear weapon state, even though it did not respect the basic non-proliferation norm, would cause irreparable damage to the regime. Most notably, accommodating India may encourage other states, e.g. Iran, to develop their own nuclear weapon program, as they can expect over time the acceptance of their (potential) nuclear weapon status by other states. Furthermore, it may alienate Pakistan – a key ally in the war in Afghanistan – as it has also developed nuclear weapons outside the framework of the NPT, but has not gained the same acceptance as a *de facto* nuclear weapon state as its archenemy India. It may even provoke a nuclear arms race in South Asia, since

Pakistan could increase its nuclear arsenal in order to compensate India's advantage after getting access to the international nuclear technology market.

In order to overcome the resistance from the advocates of the established norms, norm entrepreneurs such as India or its co-entrepreneurs, the United States, have a wide variety of means at their disposal. Traditionally, the norm-based literature focuses mainly on ideational processes, in particular persuasion (Finnemore and Sikkink 1998, Checkel 2001) and argumentation, i.e. the truth-seeking exchange of arguments (Ulbert and Risse 2005). Although it has been possible to observe these processes in many instances of prolonged norm change, recent research suggests that material factors may not be discarded (Kelley 2008, Wunderlich 2013). They can take the form of material incentives, e.g. 'to induce smaller states to change their policy', as Ikenberry and Kupchan (1990, p. 290) argued in their study on socialization and hegemonic power. It may also entail the use of outright coercion. As Payne (2001, p. 41) has observed, 'The normative developments constructivist observe often do not reflect persuasion, but instead result from a coercive mechanism'. This does not mean that a high degree of persuasion and argumentation is ultimately necessary to guarantee the long-term acceptance, or internalization (Finnemore and Sikkink 1998), of a norm or of a norm change. Persuasion and argumentation remain the default option over the long haul. They may also work in the short-term, if other actors are generally sympathetic to the policies of the norm entrepreneur. However, it is also conceivable that persuasion and argumentation do not work, in particular in the short-term if faced with particularly reluctant actors that may even possess some form of veto power during formal norm change processes. In these cases, material incentives and coercive mechanisms may play a more prominent role than has been spelt out in the literature to date.

The initial phases in norm dynamics processes are particularly prone to be affected by material factors, as at this point the persuasion-based internalization of a norm is not required. The challengers of an existing norm have to try to create a tipping point with a critical number of states that support the challenge, for instance by accepting a major exception to an existing norm (Finnemore and Sikkink 1998). Although they may try persuasion and argumentation, in the short term it is potentially more efficient to reach this tipping point by inducing or coercing other states into accepting merely formally the norm challenge. Especially in elite-driven issue areas with a long tradition of formal negotiation and bargaining such as non-proliferation both material incentives and outright coercion can be expected to have an immediate effect (Ikenberry and Kupchan 1990). To this end, states have a toolbox with a wide range of classical instruments at their disposal. In the most extreme

form, states could coerce other states to accept a norm change, especially through the use of force, though in practice this is rarely the case. More common is arguably the use of positive incentives such as concessions or negative incentives such as commercial sanctions of varying degrees in order to change the cost-benefit calculations in favor of a norm challenge. In such a case, a norm challenge and later a norm change would be underpinned by bargaining processes. In addition, states – or any other actor such as international organizations – can use more subtle forms of ‘pressure’, where the power of an argument supporting a norm challenge is enhanced by the support of an hegemonic power (Ikenberry and Kupchan 1990) or any actor that plays an authoritative model role (see Finnemore and Sikkink 1998).

It is unlikely that states with substantial material capabilities would refrain from the use of these capabilities, if they want other, more reluctant states to endorse the challenge to an existing norm. Even beyond the tipping point, when a so-called ‘norm cascade’ should begin (Finnemore and Sikkink 1998), it may be necessary to manipulate the interests of states or exert pressure to accelerate the formal acceptance of the norm challenge such as an exception to an existing norm, particularly by very reluctant states. Although socialization processes in the form of ‘...pressure for conformity, desire to enhance international legitimation, and the desire of state leaders to enhance their self-esteem facilitate norm cascades’ (Finnemore and Sikkink 1998, p. 895), the cascade may not lead to the rapid acceptance of a norm challenge by all relevant states without the use of material incentives or pressure.

Finally, it should be noted that such an acceptance of a norm challenge does not go beyond what has been called ‘pragmatic acceptance’ due to the lack of realistic alternatives (Mann 425). Therefore, the next step for norm challengers is to aim at the acquiescence by all relevant actors ‘achieved by the transmissions of norms and reshaping of value orientations and not simply by the manipulation of material incentives’ (Ikenberry and Kupchan 1990, p. 286). Ultimately, only the ‘normative acceptance’ (Mann 425) of a norm challenge through persuasion and argumentation lays the groundwork for the internalization of merely formally accepted norm challenges and establish the fundamental change of a norm in the long-term. In other words, neither socialization nor manipulation alone may account for norm dynamics processes. Norm challengers have to use rather persuasion, argumentation, manipulation and pressure for different states at different stages of their acceptance of a norm challenge. So, it is the peculiar – and often overlooked – interplay between ideational and material factors that make a tipping point and a subsequent norm cascade successful.



## India's argumentation

Like many other emerging countries, India has been a long-standing critic of the nuclear non-proliferation regime, as it discriminates between nuclear weapon and non-nuclear weapon states. In the words of Finnemore (2005, p. 193), 'Developing countries like India and Pakistan argue strongly that the current nuclear regime, as embodied in the NPT, is an unfair attempt by the nuclear "haves" to keep the "have-nots" down'. The lack of justice in the regime is, therefore, a central element of India's critique (Fey *et al.* 2013). At a more abstract level this means that India uses a well-known metanorm – justice – to frame its arguments (Fey *et al.* 2013). This is usually seen as a powerful strategy to facilitate the challenge to an existing norm, as these metanorms are, in contrast to ordinary norms, applicable across issue areas and concern a large number of actors (Müller 2013, see also Sandholtz 2009). Thus, other actors can easily relate to them. However, the use of justice arguments alone has not borne fruits.

In the 1990s India began to emphasize that it is also an exceptional case in the nuclear field and deserves, thus, special treatment. In other words, it is different from arguably more problematic states such as Pakistan or North Korea. In the aftermath of the US-India joint statement in 2005 and the upcoming decisions in the IAEA and NSG to facilitate the US-India nuclear deal, Indian policy-makers re-emphasized this argumentation. The discourses on India and nuclear issues suggest that this 'exceptional-ness' is based on three elements tailored specifically to India's profile: (1) India is an emerging power; (2) India is a fellow democracy and (3) India is a responsible nuclear actor. By using references to established values such as democracy or responsibility, India's arguments can easily resonate with the worldviews of other actors, in particular in Western democracies, and thus contribute to their acceptance during argumentation processes (see Ulbert and Risse, 361).

The first element exploits the growing belief that India is becoming steadily a key power in the international system. Although in practice it is still a developing country and lacks all the characteristics of a major power (Perkovich 2003), its sheer size in terms of landmass and population and its annual growth rate of approximately eight per cent support India's 'image as an emerging market' (Sasikumar 2007, p. 832) that cannot be ignored. In this context, nuclear energy is depicted as a viable way to sustain the country's rapid economic development and to achieve its ambitious poverty reduction goals. In comparison

to the existing energy alternatives, in particular greenhouse producing coal burning power plants, nuclear energy was even presented as a climate-friendly way of producing electricity (PTI News Agency 2006a).

Yet, Indian policy-makers are also quite frank regarding their image of India being already a major power that has to be reckoned with. As Kamal Nath, the former Indian commerce minister said in the context of a visit of a top-level French delegation in India in 2006, 'France has to recognize that the center of gravity is shifting from the Atlantic Ocean to the Indian Ocean. (...) America was the quickest to see that India is the fastest-growing free-market economy in the world. Europe is now catching up' (cited Giridharadas 2006). India as an emerging power that has to be accommodated in the current international system is also a recurring theme in the policy-oriented academic literature: Paul and Shankar (2007, p. 111) argue, for example, that 'An unsatisfied growing power does not augur well for the stability of the system, and such a state is likely to try its utmost to undermine or provoke restructuring of the regime'.

The second element – India as a fellow democracy – has been regularly played up by Indian elites (Sasikumar 2007). It is designed to intensify the value-based bonding between India and major democracies in the West, not least the United States. In fact, the United States has highlighted continuously India's democratic status in the context of the US-India nuclear agreement (Hayes 2009). Already the first paragraph of the Joint Statement between President George W. Bush and Prime Minister Manmohan Singh (2005) refers prominently to democracy and democratic values. In the subsequent negotiations of the NSG waiver, the '...US pushed for a consensus by projecting the waiver as a "historic opportunity" to bring the largest democracy and one of the biggest economies into the global nuclear mainstream' (PTI News Agency 2008). In short, both India and the United States portrayed their rapprochement in the nuclear field as the rapprochement between two major democracies.

The third and final element is India's success in portraying itself as a responsible nuclear actor with an impeccable non-proliferation record (Sasikumar 2007, Narlikar 2011). Indian policy-makers make constantly clear that, in contrast to Pakistan, it has never supported the nuclear weapon programs of other states. It is, therefore, in the arguments of Indian policy-makers a state that can be trusted in the nuclear field (Vaidyanathan 2008). In the words of Shashank (2007, p. 38), the former Indian foreign secretary, '...the sensitivities of the Nuclear Suppliers Group (NSG) were taken into account so that it would not be considered as an exception for one country – India – at random, but an exception for a country which is considered an exceptional and exemplary case...'. In the wake of the US-

India nuclear agreement, the US government joined in that kind of argumentation and reinforced through its status as the dominant power in the international system the legitimacy of the Indian arguments. In the previously mentioned Joint Statement between President George W. Bush and Prime Minister Manmohan Singh (2005), President Bush ‘...stated that as a responsible state with advanced nuclear technology, India should acquire the same benefits and advantages as other such states’.

In sum, India has established with the crucial support of the US government a comprehensive argumentation based on shared values and common understandings with other actors in the nuclear non-proliferation regime. In this way, it has laid the groundwork for the persuasion of other actors to accept it as a *de facto* nuclear weapon state in the nuclear non-proliferation regime. At the same time, however, India has strengthened its muscles to underpin its argumentation with incentives or more coercive measures.

### **Buying India’s argumentation**

Given India’s elaborate argumentation, it should be possible to discern at least some persuasive effects. According to Finnemore, ‘...it is easy to imagine a role for India in rewriting parts of the nuclear regime and, again, this would most likely draw support from others’ (Finnemore 2005, p. 204). In fact, the level of acceptance of India’s argumentation can be seen as remarkable (Sasikumar 2007). However, looking at the 1990s, this development has not been a straightforward affair. From a European perspective, the most revealing case in this regard is the reaction to the nuclear tests in India (and Pakistan) in 1998, a major non-proliferation crisis in the 1990s. Whereas some member states strongly condemned India and even suspended their development aid, others were much more permissive, in particular France (Portela 2010). It comes, therefore, as no surprise that the EU’s common stance in the South Asian nuclear test crisis is best described as a typical example of weak and slow declaratory policies (Hassan 2013). The EU was certainly reluctant to antagonize India with a strong policy response in the nuclear field. However, at the same time the Union was able to condemn the tests with unusually harsh words (European Union 1998). Similar statements can also be traced until the Presidency Declaration condemning India’s test of ballistic missiles in January 2002. In other words, despite some disagreement among EU member states regarding the reaction to India’s nuclear

policies at the time, they were sufficiently united to condemn India unequivocally. India's inclusion in the non-proliferation regime was certainly not on the common European table.

However, the 1990s saw a major change in US foreign policy towards India, which would have major implications for the non-proliferation regime later on (Carranza 2007). More specifically, the Clinton and Bush Jr. administrations tried to improve step by step America's strategic relations with India, thus recognizing India's increasing importance in the post-Cold War world (Pant 2007). The decisive step in this direction was taken by George W. Bush, when he issued with Manmohan Singh the already mentioned 2005 joint declaration that would effectively lead to the end of India's nuclear isolation. Ever since, proponents of the US-India nuclear rapprochement brought out the heavy artillery in the ensuing public debate and reiterated largely India's argumentation outlined in the previous section. As Nicholas Burns, then the Undersecretary of State for Political Affairs, put it in a nutshell, 'The US is "happy to treat a friendly country differently"' (cited Horner 2006). The American support was a major boost for Indian efforts to get accepted in the non-proliferation regime as a nuclear weapon state. More specifically, the support from one of the key powers in the regime enhanced the legitimacy of the Indian argumentation and reinforced its bargaining position, as other countries knew that the Indian positions largely reflected the US position.

In Europe, the push for India's inclusion in the non-proliferation regime fell on fertile ground in some EU member states, in particular those states that were already more than lukewarm about condemning the Indian tests in 1998. The first notable difference to the previous years was the lack of non-proliferation specific statements on India and the complete absence of India in the key documents of the EU's emerging non-proliferation policy, in particular the 2003 WMD Strategy and the 2008 New Lines for Action, which updated the former. Over the years, major European states, in particular France and the United Kingdom, showed clear signs that they were not only sympathetic to India but actually accepted India's argumentation: They began to reiterate the arguments about India as a major power, fellow democracy and responsible nuclear power.

The argument about India as an emerging power has been especially prominent in the case of French 'great power thinking', where India plays a key role in an emerging multipolar system. In fact, France has been an increasingly firm supporter of India since the end of the Cold War (Gupta, 2009). Likewise, Tony Blair (2010, p. 336), the British Prime Minister until 2007, asked rhetorically in his autobiography, 'And will not India and China, each with three times as many citizens as the whole of the EU put together, once their economies have

developed sufficiently as they will do, not reconfigure entirely the geopolitics of the world and in our lifetime?’. This kind of thinking was also reflected in the negotiations in the IAEA Board of Governors and the NSG. Referring specifically to France and Russia, one NSG delegate during the early negotiations was quoted as saying that the NSG waiver and, consequently, nuclear trade with India was needed ‘on the basis that the time has come for recognizing India’s world power status and significance’ (cited Hibbs 2005a). Likewise, British diplomats tend to use very similar arguments.<sup>5</sup> India’s status as a major power was also recognized indirectly, particularly regarding its perceived importance in different matters affected by the changes proposed in the IAEA and the NSG. For instance, David Milliband, the British Foreign Secretary between 2007 and 2010, supported the proposed changes ‘to make a significant contribution to energy and climate security’ (Page 2008). Likewise, a French diplomat argued that ‘for France “the biggest concern is India’s challenge to the global energy economy and how we respond to it”’ (cited Hibbs and Horner 2006).

India’s democratic credentials, the second element of its argumentation, have also been reflected in Europe. As Tony Blair (2010, p. 688) emphasized in his autobiography, ‘...India remains the shining example of a large nation, still developing, that manages to be genuinely democratic’. Moreover, these kinds of arguments were used in the specific context of the nuclear negotiations with India. For instance, while contemplating EU-India nuclear cooperation, Jean Christian Remond, then the Head of the European Commission Delegation in New Delhi, argued that ‘Basically we see India as a natural interlocutor with common approach, common values and rule-based international order’ (cited PTI News Agency 2007). Not surprisingly, in interviews with European policy-makers about how they judge the US-India nuclear deal and its implications in Europe, many emphasize the fact that India is a democracy, whereas other states with significant nuclear capabilities such as Pakistan or Iran are clearly not. At the same time, the importance of the responsibility of India in the nuclear field, including its willingness to put its civilian nuclear installations under international control, was also a recurring theme in interviews.<sup>6</sup> Even at the most senior level, responsibility appeared as an important theme. *The Times of India*, for example, wrote during a visit of Jacques Chirac, the President of France until 2007: ‘Describing India as “a responsible power”, he said that it was “indispensable” to ensure that the country has access to civilian nuclear technology to enable it to meet “its immense energy needs, while limiting its emissions of greenhouse gases”’ (PTI New Agency 2006c).

All in all, European policy-makers, in particular in France and the UK, have adopted and reiterated widely India’s argumentation, showing thus the persuasive effects of India’s

arguments. However, this does not exclude that other factors are at play, too. As Finnemore and Sikkink (1998, p. 912) recognize without spelling out the details, ‘some norm conformance may be driven by material self-interest’. Given the dominance of economic and commercial relations between Europe and India (Kavalski 2008),<sup>7</sup> this material self-interest might be driven above all by economic benefits. As Nicolas Sarkozy (2007, p. 228), the French President during the decisive negotiations in the IAEA Board of Governors and the NSG, made clear at the beginning of his presidency: ‘...it’s necessary for us to rethink our traditional economic relations and to reorient them toward areas of high growth’.

The largest benefit EU member states can expect from the US-India nuclear deal and the necessary changes to the non-proliferation regime is the NSG waiver, which was specifically designed to open up the nuclear trade with India. Consequently, some EU member states, especially the big member states with advanced nuclear industries, had a direct incentive to support the waiver for India in the NSG despite the (indirect) non-proliferation costs this might incur. According to the Confederation of Indian Industry, India plans to build between 18 and 20 new nuclear power plants which means that there are during the next 15 years commercial opportunities worth around \$ 30 billion (Bedi 2008). It is, therefore, hardly surprising that the strongest supporters of the Indo-US nuclear agreement – France followed by the United Kingdom – are those states that have benefited most from the agreement commercially in recent years. Already in 2008, right after the adoption of the waiver, France signed a cooperation agreement with India, followed by an arrangement allowing French nuclear fuel and technology export to India and later that year, a framework contract worth €7 billion signed between Areva, a French state-owned nuclear technology company, and India (Ambassade de France à New Delhi 2013). In 2010, a joint declaration on civilian nuclear cooperation was also signed between India and the UK. In the same year, the UK government allowed formally nuclear exports to India. One year later, *The Time* reported the possible involvement of Serco and Rolls Royce, two British industrial companies, in the construction of the largest Indian nuclear power plant (Pagnamenta 2011). Furthermore, India has also demonstrated a strong interest in the EU’s strategic industries such as Galileo or Airbus (Kaul 2006).

However, it is not plausible that material benefits alone can account for the support of the India-specific changes to the non-proliferation regime by countries such as France or the UK. If material benefits alone had dictated their policies, the NSG should have changed the (general) criteria of its export guidelines, instead of an India-specific waiver in the NSG. In this way, it would have been possible to obtain all the benefits mentioned before in much

more cases, in particular by opening up nuclear trade with Israel and Pakistan.<sup>8</sup> In fact, Pakistan has lobbied hard to get the same privileges as India, arguing that it needs nuclear energy for its economic development or that nuclear energy is a climate-friendly technology (see, for example, The News Website 2008). Likewise, the economic arguments do not explain why India was able to obtain various privileges in terms of nuclear trade, even though it had developed nuclear weapons outside the framework of the NPT, whereas a country like Iran that has signed and ratified the NPT is punished for its nuclear program before it even has a nuclear weapon. Generally, the answer given to this conundrum by policy-makers is that it is not possible to compare apples and oranges, as one diplomat said.<sup>9</sup> In other words, India is a special case that is quite different from others such as Pakistan, Israel or Iran: it is a major power, a fellow democracy and a responsible nuclear actor.

This shows how the combination of persuasion and additional material incentives convinced a number of already sympathetic states of the need to challenge the traditional interpretation of the non-proliferation norm to integrate India in the nuclear regime. These states have adopted, in turn, India's argumentation to win over more reluctant states. Consequently, they reinforced the power and credibility of the arguments by increasing the number of states that voice these very same arguments. In the case of France and the UK it was also their generally accepted status as major powers that further contributed to the strength of their arguments. Moreover, other major powers outside of Europe, most notably the United States, also argued forcefully for the India-specific changes to the non-proliferation regime. Overall, this established a powerful dynamic of critical states supporting India-specific changes. More specifically, these dynamics created a tipping point, at which a large group of states without a vocal and clear-cut policy on the issue such as the Baltic states were swayed and accepted the need for an Indian exception. This also includes major actors such as Germany, where the government – and competing ministries – could not agree on forceful policies of their own.<sup>10</sup> However, even after the tipping point, there was still a small minority of mainly EU member states that held their ground.

### **Beyond the tipping point: the acquiescence of the reluctant states**

Although India, the United States and European supporters of the US-India nuclear deal could create early on a tipping point in favor of the necessary exceptions to the non-proliferation regime, the formal acceptance of these exceptions by all regime members took

substantially longer than the implicit automatism in the literature on tipping points would suggest. Even with a large majority of states in favor, there remained a small group of states that offered strong resistance to any exception. Among the EU member states, Austria and Ireland offered the most consistent resistance throughout and were considered to be the staunchest opponents of the US-India nuclear deal. Occasionally, other EU member states also voiced their criticism, in particular the Netherlands and Sweden. However, they stayed largely in the background and accepted silently the majority views.

At the beginning of the process, many participants actually believed that an exception was not possible at all, as it undermined a basic norm of the international non-proliferation regime that says that states obtain the right to peaceful nuclear energy – and to nuclear trade – by not developing nuclear weapons. As a European NSG member representative said in 2005, ‘Because the credibility of the NPT (Nuclear Nonproliferation Treaty) is at stake, the U.S. will never get a consensus on the issue’ (cited Hibbs 2005b). Many diplomats also expressed hope that the issue would simply ‘go away’ (Hibbs and Horner 2006), as the US-India deal was a controversial topic in the United States and, above all, inside India. The Indian government of Manmohan Singh almost collapsed due to widespread opposition in the Indian parliament (Weiss 2007). Consequently, the skeptical countries, in particular Austria and Ireland, resorted to one of the classical means of norm change resisters, namely delaying tactics such as keeping the issue off the agenda (see Elgström 2000). As Dermot Ahern, the Irish Foreign Minister between 2004 and 2008, said in the Irish Parliament, ‘I have received indications that there is no sense in taking a position on this matter until all elements are known and on the table. A great deal of water must flow under the bridge’ (Dáil Éireann 2007, p. 447). It comes, therefore as no surprise that both the IAEA Board of Governors and the NSG decided about the necessary changes three years after the US-India Joint Statement. This was particularly clear in the NSG: a decision was adjourned at the 2006 meeting in Brasilia, the 2007 meeting in Cape Town saw only informal meetings between NSG delegates and Indian representatives and the 2008 meeting in Berlin postponed any decisions to a follow-up meeting in Vienna a few months later. Even at the decisive meeting in August 2008 in Vienna, the skeptical states tabled fifty amendments to undermine the adoption of the proposed NSG waiver for India (Hibbs 2008b). At the same time, the skeptical countries and other relevant actors, in particular the non-proliferation unit in the Council of the European Union, maintained steadily their discourse that defended the established interpretation of the non-proliferation norm against the exceptions proposed by India and the United States.<sup>11</sup> Annalisa Giannella, then the head of the Council’s non-proliferation unit, made this clear in



an unusually frank way: ‘...the nuclear deal with India has raised and continues to raise so many questions from the point of view of the credibility of the NPT. We have here a case where a country is rewarded without adhering to all the rules subscribed by the vast majority’ (Council of the European Union, 2007).

Given this steady resistance from a small group of actors, the key supporters of the US-India nuclear deal and the corresponding exceptions in the IAEA and NSG – India itself, France, the UK and, crucially, the United States – resorted to strong-arm tactics to impose their will. Initially, however, they also used persistent persuasion. Indian officials, for example, organized between 2005 and 2008 regular briefings for European states on the nuclear agreement with the United States (see, for example, Kaul 2006), where they tried to convince their European counterparts of the advantages of the agreement. But the direct pressure intensified especially before the decisive meetings in the IAEA Board of Governors and the NSG in late summer 2008. Prior to the IAEA decision, the EU decided under the French presidency that EU member states should not oppose an agreement in a roll-call vote, should not call for such a vote and should not to block consensus without a vote (Hibbs 2008a). This decision took virtually the teeth out of the opposition of Austria, the only skeptical country on the IAEA Board of Governors at that time. Moreover, the French Presidency issued an EU statement endorsing the IAEA decision as a contribution to the strengthening of the non-proliferation regime, even though this did not reflect Austria’s wishes (*Déclaration prononcée par la France au nom de l’Union européenne 2008*, Raabe 2008). Only grudgingly did Austria refrain from using its veto against the EU statement and limited its resistance to issuing – with the support of the Netherlands, Norway and Costa Rica – a declaration with its reservations at the IAEA Board of Governors meeting (Hibbs 2008a, Varadarajan 2008). On 5 September 2008 – the day before the crucial meeting in the NSG – Brian Cowen, then the Taoiseach, was called by both Gordon Brown, then the British Prime Minister, and by George W. Bush urging him to support the NSG waiver. Moreover, he even received a letter from Nicolas Sarkozy, the French President, with the same objective (Fitzgerald 2008). Secretary of State Condoleezza Rice, for her part, made over two dozen calls in two days right before the NSG decision on the waiver for India (Sengupta and Mazzetti 2008). Jimmy Carter (2008), the former US President and a critic of the US-India nuclear deal, even alluded to possible secret deals and side payments to gain the full acceptance of the NSG waiver. Although no concrete evidence has been found for such deals, India did offer important concessions, most notably ‘a voluntary, unilateral moratorium on nuclear testing’ in its Statement on Disarmament and Nonproliferation on 5 September 2008

(cited Kerr 2011, pp. 45-46), in order to entice skeptical countries to support the US-India nuclear deal and the necessary exceptions in the international non-proliferation regime. Several representatives from reluctant countries argued specifically that the moratorium was decisive for their countries' acceptance of the NSG waiver.<sup>12</sup> A Swedish official even spoke directly of a 'give and take' agreement with India.<sup>13</sup> This highlights in particular the role played by bargaining tactics.

At the same time, the skeptical countries also had good reasons to fear long-term economic consequences, including countries without a considerable nuclear industry or nuclear trade activities. According to *The Irish Times*, '...[The Foreign Affairs] Minister [Dermot Ahern] has acknowledged that India's rapidly-increasing economic importance is weighing heavily on members of the Nuclear Suppliers Group, and on those included in the New Agenda Coalition set up in 1998 to bring about a nuclear weapons-free world' (Hennessy 2007). In 2006, an Irish trade delegation led by the Taoiseach Bertie Ahern had actually visited India to intensify the trade links between the two countries. *The Irish Times* concluded that 'Future trade deals with India, one of the world's fastest growing economies, could suffer if the Government blocks the United States' decision to sell nuclear technology to India...' (Hennessy 2007).

Apart from the bargaining and the direct and indirect pressure that was brought to bear on the skeptical countries, the existence of a tipping point in favor of the US-India nuclear deal also weighed heavily on these countries, especially in the NSG where all of them were represented. Given the strong support from major powers, including the United States, the UK, France and even Russia, their representatives believed that they were too weak to have the right to block the NSG waiver. *The Irish Times* cited an Irish source as saying, 'Ireland never considered going it alone. The view was that once it went below a certain number it was not sustainable. Our strong preference was that this deal would not happen but Ireland cannot be expected to be the conscience of the world' (Fitzgerald 2008). They could not even count on the firm support from traditionally strong defenders of the existing non-proliferation norm.<sup>14</sup> Sweden, in particular, took a much more pragmatic stance after a change of government in 2006 (Becker-Jacob *et al.* 2013).

In addition, leading authorities in the non-proliferation regime, above all Mohamed ElBaradei, then the IAEA Director-General, were strong supporters of the Indo-US nuclear agreement, arguing essentially that weak Indian safeguards were better than none (ElBaradei 2006a, 2006b). His endorsement of the agreement was a clear case of external legitimization of the India-specific IAEA safeguard agreement. In other words, given the generally accepted

impartiality of the IAEA Director-General and his secretariat regarding India, it became particularly difficult for a single IAEA or NSG member state to oppose the necessary exceptions in the regime. In a common statement with like-minded states, Austria declared in the aftermath of the crucial IAEA Board of Governor meeting on 1 August 2008 that ‘Our governments (...) ultimately put trust in the judgment of Director-General ElBaradei who has personally endorsed the Safeguards Agreement as a basis for cooperation with India’ (cited Hibbs 2008a).<sup>15</sup> In a similar vein, the consciousness of forming a small group of countries that lacks the support from key figures informed strongly their decision not to oppose the Indian waiver in the NSG. As the Irish Foreign Minister pointed out, when he defended Ireland’s decision, ‘It became increasingly clear that a very large majority of NSG member states, including several normally like-minded countries, were in favor of granting the exemption, as were a very large majority of our EU partners. The Director General of the IAEA, Dr. ElBaradei, also strongly supported the deal’ (Houses of the Oireachtas 2008).

Summing up, outright pressure, bargaining tactics and having both a large majority of states and international authorities in favor of the India-specific exceptions induced the skeptical countries to go along with the proposed changes in the IAEA and the NSG. There is little evidence to suggest that countries such as Austria or Ireland were persuaded through classical elite socialization processes, for example in the context of the EU’s working group on non-proliferation (CONOP), which meets once a month in Brussels. Although the US-India nuclear deal was discussed in CONOP, the debates served largely as information exchanges.<sup>16</sup> Furthermore, most countries took their decisions at the government level, which is above the CONOP level. The final decisions of the skeptical countries reflect rather the previously mentioned pragmatic acceptance due to the perceived lack of realistic alternatives.<sup>17</sup> An Austrian diplomat made clear that they accepted the deals with India even though they are not happy with them.<sup>18</sup> But over time, this pragmatic acceptance may lead to acquiescence, as has been pointed out in the conceptual framework. Some of the skeptical countries have already taken the first step in this direction, when they began to justify their decisions using the argumentation of the supporters of the US-India nuclear deal about India as an emerging power, fellow democracy and responsible nuclear actor (see Houses of the Oireachtas 2008). This may lead, ultimately, to the normative acceptance of the India-specific exceptions in the IAEA and the NSG as fundamental changes to the non-proliferation norm.

## **Conclusions**

India has been a major challenge to the existing nuclear non-proliferation regime. Its growing acceptance in the regime as a what has been called a '*de facto* legitimate nuclear power' (Narlikar 2011, p. 1612) has undermined the regime's basic non-proliferation norm and has challenged the EU's unfettered support for the regime. However, the necessary changes in the IAEA and the NSG were not implemented without substantial resistance. In essence, the supporters of the normative exceptions that would recognize India as a *de facto* nuclear weapon state, even though it developed nuclear weapons in violation of the non-proliferation norm, had to compete with a number of actors that defended the traditional interpretation of the non-proliferation norm that strictly prohibited the recognition of proliferating states. Ultimately, the exception prevailed, but the process that led to the exception was not as straightforward as the literature on norm dynamics suggests, in particular regarding the roles of material factors and tipping points.

Traditional norm challenge mechanisms such as persuasion and argumentation certainly played an important role. Generally sympathetic countries such as France or the UK readily adopted India's arguments that it was a major power, a fellow democracy and a responsible nuclear actor and deserved, thus, special treatment in the nuclear non-proliferation regime. Although material incentives, especially opening up the nuclear trade with India, also played a role, persuasion and argumentation appeared to be the dominant mechanisms. This created early on a tipping point, at which the large majority of states endorsed the measures that would cement the exception, both in the IAEA and the NSG. However, the tipping did not reach immediately a small group of mainly European states that continued to resist any kind of change of the existing non-proliferation norm. Crucially, it was only very grudgingly that these states, above all Austria and Ireland, refrained ultimately from opposing the exceptions in the IAEA and the NSG. In other words, their final decisions were more the result of formal acquiescence than the internalization of a more fundamental norm change. After all, if the small group of resisting states could have chosen freely, they had not supported the exception (see also Payne 2001, p. 41).

This new insight has major implications for the literature on norm challenges, norm change and their related processes. First, it is more important to distinguish between short- and long-term processes than generally acknowledged in the literature. Whereas the literature's traditional focus on persuasion and argumentation has proven useful for prolonged internalization processes, the analysis of the reluctant states concerning India's challenge to the non-proliferation norm brought the initial role of material factors to the fore.

This was reinforced by the reluctant states' *de facto* veto power on any necessary measures to implement the changes in the NSG – an aspect largely neglected in the norm change literature. More specifically, the research results outline three factors that brought about the short-term endorsement of the changes by the reluctant states: (1) commercial considerations that raised the stakes for these states; (2) bargaining processes and the corresponding concessions by the states supporting the norm challenge; and (3) the active support by major powers, in particular the United States, and authoritative actors, most notably the IAEA. The last point also underpins, at least partly, the still under-explored 'prominence hypothesis' formulated by Finnemore and Sikkink (1997, p. 906), which states that 'Norms held by states widely viewed as successful and desirable models are thus likely to become prominent and diffuse'. Overall, the article's focus on short-term material versus long-term ideational processes strengthens and specifies the emerging but still relatively vague literature that concedes an important role to material factors in norm processes (Payne 2001, Kelley 2008, Wunderlich 2013).

What does the outcome of the US-India nuclear deal mean for the EU as an international actor? First, member states acting in unison is not necessarily the result of a general agreement on a certain issue. Member states may ultimately reach the same conclusion, e.g. to support India-specific measures in the IAEA and the NSG that weaken the non-proliferation norm, but their reasoning is very different. Yet, this is a very weak basis to deal strategically with emerging actors such as India. It shows to India that the EU as a whole does not embrace wholeheartedly the changes that accommodate India in the international system (Allen 2013). Second, it adds to the evidence that highlights the dominance of the large member states, in particular France and the UK, in European foreign and security policy. As long as they agree on an important issue, it appears – contrary to recent research (Nasra 2011) – to be very difficult for the smaller ones to offer long-term resistance. Third, the dominance of the larger member states can stir the EU away from its principled foreign policy approach based on the traditional principles of multilateralism as enshrined in both the European Security Strategy and the EU WMD Strategy (Rynning 2007). That is, instead of promoting the rather unrealistic adhesion of India to the NPT as a non-nuclear weapon states as before (Hassan 2013), the new approach is much more pragmatic and focuses on the effectiveness of the regime with India as a member, as shown already in the new NSG guidelines regarding enrichment and reprocessing technologies (Meier 2012). But to what extent this is actually a sustainable approach in the long-term will be only shown by the

reaction of EU member states in the next planned step of India's integration into the nuclear non-proliferation regime: full membership in the NSG (Thränert and Bieri 2013).

## Notes

<sup>1</sup> In practice, the five permanent members of the United Nations Security Council: China, France, the Soviet Union (now Russia), the United Kingdom and the United States.

<sup>2</sup> Decisions in the IAEA Board of Governors are normally taken by consensus, but a state member can also request an amendment and/or a vote, in which case majority voting rules apply.

<sup>3</sup> The other three being Israel, Pakistan and South Sudan. The latter's signature and ratification is considered to be only a question of time. The status of North Korea has been disputed since its withdrawal in 2003.

<sup>4</sup> For an elaborated example, see Weiss 2007.

<sup>5</sup> Interview with senior British official in Vienna, February 2013.

<sup>6</sup> Interviews/phone interviews with national officials in Madrid, December 2008, Brussels, January 2009, and Dublin, June 2009.

<sup>7</sup> For an overview of the existing economic and commercial data, see Sachdeva 2012.

<sup>8</sup> Initially there was some discussion about the possibility to use general criteria to grant NSG waivers for states that have not ratified the NPT, which includes Israel and Pakistan (Hibbs 2011).

<sup>9</sup> Interview with national official in Brussels, January 2009.

<sup>10</sup> Interviews with national officials in Brussels, January 2009, and Vienna, February 2013.

<sup>11</sup> Interviews with a Member of the European Parliament and a Parliament administrator in Brussels, January 2009.

<sup>12</sup> Interviews/phone interviews with national officials in Brussels, January 2009, and Dublin, June 2009.

<sup>13</sup> Interview with Swedish official in Brussels, January 2009.

<sup>14</sup> Phone interview with national official in Dublin, June 2009.

<sup>15</sup> Interviews/phone interviews with national officials in Brussels, January 2009, and Dublin, June 2009.

<sup>16</sup> Interview with national official in Brussels, December 2008, and a senior EU official in Brussels, March 2013.

<sup>17</sup> Phone interview in Dublin, June 2009.

<sup>18</sup> Interview with national official in Vienna, February 2013.

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